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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/809,649
Filing Date: March 25, 2004
Appellant(s): FORREST ET AL.

Theodore W. Olds (# 33,080)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 24, 2006 appealing from the Office action mailed June 13, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

USPN 3,430,994

Keeler

03-1969

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 5-9 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 3,430,994 to Keeler. Keeler discloses an operating handle knob comprising;

an operating handle knob (32) having an inner bore (36), the inner bore being non-cylindrical; an intermediate member (10) having an inner bore (12) to receive a shaft (42) from a control valve, the intermediate member having a non-cylindrical outer periphery; and the non-cylindrical bore and the non-cylindrical outer periphery mating to provide a contact surface such that rotation of the operating handle knob rotates the intermediate member, the contact surface includes three lobes (16, 18, 20) extending from one of the knob and intermediate member,

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and three notches (116, 118, 120) formed in the other of the knob and the intermediate member; the intermediate member has the three lobes extending from the outer periphery that fit into the three notches formed in the bore of the knob; and the intermediate is generally A-shaped as seen in Fig. 5.

As to claims 5 and 6, the intermediate member has a central apex lobe (20) and two side lobes (16, 18) wherein the apex lobe being generally stiffer than the side lobes due to a slot (14) between the side lobes.

As to claims 7, 8 and 9, the lobes have split ends extending from the outer periphery of the intermediate member and separated by separate concave channel. As seen in Fig. 1, the lobes include a ribbed outer surface (space between each set (16-16'; 18-18'; 20-20')), with side ribs at lobes (16, 18) extending circumferentially outwardly of a central leg portion and a forward rib at (20) extending forwardly of the central leg portion. As seen in Fig. 1 and 5, the spacing of the side lobes are space by an angle that is greater than an angle spacing of the corresponding notches in the bore of the knob due to the slot, such that there is a spring force applied to the side lobes when received in their respective notches.

Claims 10 and 12-20 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 3,430,994 to Keeler. Keeler discloses an operating handle comprising;

a knob (32) having a particular appearance, and a bore (36) with an inner periphery that is non-cylindrical; and a plurality of intermediate members (10, 130), the intermediate members each having a central bore (12) designed to receive a dimmer switch shaft, the intermediate members having a non-cylindrical outer periphery, the non-cylindrical bore and non-cylindrical outer periphery mating to provide a contact surface such that rotation of the knob rotates the

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intermediate member, the contact surface includes a plurality of lobes (16, 18, 20) generally A-shaped extending from the intermediate member that fit into a plurality of notches (116, 118, 120) formed in the knob.

As to claims 14 and 15, the intermediate member has a central apex lobe (20) and two side lobes (16, 18) wherein the apex lobe being generally stiffer than the side lobes due to a slot (14) between the side lobes.

As to claims 16-18 and 20, the lobes have split ends extending from the outer periphery of the intermediate member and separated by separate concave channel. As seen in Fig. 1, the lobes include a ribbed outer surface (space between each set (16-16'; 18-18'; 20-20')), with side ribs at lobes (16, 18) extending circumferentially outwardly of a central leg portion and a forward rib at (20) extending forwardly of the central leg portion. As seen in Fig. 1 and 5, the spacing of the side lobes are space by an angle that is greater than an angle spacing of the corresponding notches in the bore of the knob due to the slot, such that there is a spring force applied to the side lobes when received in their respective notches.

(10) Response to Argument

In response to appellant's arguments filed in the brief on August 24, 2006 concerning the prior art fails to disclose or suggest every limitation as set forth in appellant's claims is found to be non-persuasive. In particular, appellant considers the prior art reference of Keeler, relied upon by the Examiner, is non-analogous to appellant's claimed invention.

At the outset, appellant states on page 4 of the brief in the arguments that Keeler fails to anticipate claim 1. Specifically, appellant argues that claim 1 recites "concrete structure" that

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Keeler is deficient in anticipating or rendering obvious. Here, the Examiner agrees with appellant that claim 1 does recite structural limitations, but it so happens that the disclosure of Keeler discloses “concrete structure” as well, that appellant cannot simply dismiss. The Examiner believes appellant dismisses the fact that Keeler discloses an intermediate member 10 having an inner bore 12 to receive a shaft 42 from a control valve because Keeler does not specifically disclose an intermediate member having an inner bore to receive a shaft from a dimmer switch. Here, the Examiner believes the burden shifts to appellant to explain to the Examiner and Board, where in claim 1 is a dimmer switch positively recited in the claim. The preamble of claim 1 may set forth the environment of a particular knob, but a dimmer switch is not claimed. Further, in response to this argument it has been held that function follows form in an anticipation rejection:

In re Schreiber, 128 F.3d 1473, 44 USPQ2d 1429 (Fed. Cir. 1997)(aff'g PTO).

The court's decision illustrated the risks an applicant takes by defining the claimed invention in functional language. The Office rejected claims directed to a funnel top for a popcorn container as anticipated by a funnel top for an oil can, noting that the oil funnel could perform the same function of dispensing popcorn. Schreiber argued that an oil can funnel was not a proper reference for rejecting a popcorn dispensing funnel, since they are in completely different fields of endeavor. The court affirmed the Office, noting that analogous art is not a consideration for anticipation. Since the oil can funnel was inherently capable of dispensing popcorn and all the other limitations were met, the anticipation rejection was proper. Thus, the Examiner believes Keeler is inherently capable of dimming a light of a light switch and since Keeler meets all other structural limitations of claim 1, the anticipation rejection of Keeler is proper.

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Moreover, one of ordinary skill in the art may present a broad interpretation that Keeler includes an intermediate member having an inner bore to receive a shaft from a dimmer switch because broadly, a control valve may be considered a switch to dim or regulate flow of gas to produce a temperature range exhibiting a low heat (low intensity flame) to high heat (high intensity flame) of a gas stove appliance. Therefore, for the reasoning described above the Examiner believes the rejection of Keeler over appellant's claim 1 and subsequent dependent claims is proper and should be maintained.

Turning to appellant's arguments presented on page 5 of the brief pertaining to claim 6 in which appellant contends Keeler cannot meet the limitations is found non-persuasive. Here, claim 6 requires an apex lobe to be generally stiffer than the side lobes. Keeler, as evidenced by figure 1, defines a central apex lobe 20 and a first side lobe 16 and a second side lobe 18, wherein the apex lobe is generally stiffer than the side lobes because a gap 14 is juxtapose the side lobes. At this point, a flexure inward or outward of either of the side lobes relative to one another can be achieved. However, due to the spacing of the central apex lobe from the side lobes and the gap, the central apex lobe is generally stiffer than the side lobes if a flexure movement is made. Therefore, for the reasoning described above the Examiner believes the rejection of Keeler over appellant's claim 6 is proper and should be maintained.

As to appellant's arguments presented on page 5 of the brief pertaining to claim 7 in which appellant contends Keeler cannot meet the limitations is found non-persuasive. Here appellant contends Keeler does not disclose that the intermediate member has two side lobes spaced by an angle greater than an angle spacing of corresponding notches in the bore in the knob, and such that there is a spring force tending to separate the lobes when in corresponding

notches. The Examiner disagrees with appellant because the spacing of the side lobes 16, 18 as evidenced by figure 1 is at an angle different from the angle of the corresponding notches 116, 118 due to presence of the gap 14 separating the side lobes when the intermediate member is illustrated not in use, however, the gap 14 disappears or inner edges of the side lobes are forced together in abutting relationship when the intermediate member is assembled with the knob as seen in figure 4, thus the corresponding notches in the bore of the knob are disposed at an angle differently than the intermediate member as shown in figure 1 as a result of a spring force applied to the side lobes when received in their respective notches due to the resiliency of the intermediate member. Therefore, for the reasoning described above the Examiner believes the rejection of Keeler over appellant's claim 7 is proper and should be maintained.

Next, appellant argues Keeler fails to disclose or suggest a universal dimmer switch knob kit as recited in claim 10. The Examiner disagrees with appellant because claim 10 is similar to claim 1, except, appellant requires more than one intermediate member. Here, the Examiner relies on figures 1 and 5 and the disclosure of Keeler describing two distinct embodiments of the intermediate member and the Examiner believes Keeler's illustration of multiple embodiments of the intermediate member satisfies the structural limitations of the body of claim 10. Whether appellant describes a dimmer switch knob kit is germane to patentability of this claim. Again, appellant takes the position to imply a "dimmer switch" or "dimmer switch kit" is patentably and structurally distinct from the full disclosure of Keeler's handle invention. Again, the Examiner believes the burden shifts to appellant to point out to the Examiner and Board, where in claim 10 is a dimmer switch positively recited. The preamble of claim 10 may set forth the environment of a particular knob and/or knob components, but a dimmer switch is not claimed.

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Further, it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause.

Kropa v. Robie, 88 USPQ 478 (CCPA 1951).

Therefore, for the reasoning described above the Examiner believes the rejection of Keeler over appellant's claim 10 is proper and should be maintained.

As to appellant's separate arguments pertaining to claims 15, 16 and 19, the response to these respective arguments has been established above due to the similarity of the argued subject matter pertaining to claims 6, 7, 1 and 10 respectively.

In conclusion, the Examiner believes appellant's remarks presented in the appeal brief of August 24, 2006 have been fully addressed. The Examiner also believes the explanation of how Keeler anticipates appellant's claims under appeal are clear and proper. Accordingly, the Examiner is of the opinion claims 1, 5-10 and 12-20 should remain rejected as being unpatentable over Keeler.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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